

**HIGHLINE WATER DISTRICT
King County, Washington**

RESOLUTION 18-10-17D

RESOLUTION AUTHORIZING BUSINESS FIXTURE RELOCATION AGREEMENT, PHASE 1, BETWEEN HIGHLINE WATER DISTRICT (“UTILITY”) AND CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY (“SOUND TRANSIT”) RELATING TO MANSION HILL WATER TANKS

WHEREAS, Sound Transit is authorized to plan, design, and construct the Federal Way Link Extension Project (“FWLE Project”), a 7.6-mile extension of the regional light rail system. Sound Transit plans to start construction of the FWLE Project in 2019 with a start of light rail service targeted for 2024; and

WHEREAS, certain of Utility’s land and business fixtures at the Utility’s Mansion Hill Reservoir Site are located within the projected route of the FWLE Project and conflict with construction or future operation of the FWLE Project; and

WHEREAS, Sound Transit sent to the Utility a Notice of Eligibility for moving and relocation expenses under the Uniform Relocation Act, dated June 23, 2017; and

WHEREAS, Utility is agreeable to the property acquisition and the demolition of certain Business Fixtures to accommodate the FWLE Project. Utility is therefore entitled to reimbursement for actual reasonable and necessary costs for the design, procure, and construct replacement business fixtures to accommodate the FWLE Project; and

WHEREAS, the sale of real property rights from Utility to Sound Transit will be dealt with in compliance with the Uniform Relocation Act, 42 USC 4601, et seq., and implementing regulations found in 49 CRF part 24, and is not the subject of this Agreement regarding reimbursement for the relocation of business fixtures.

NOW, THEREFORE, BE IT RESOLVED:

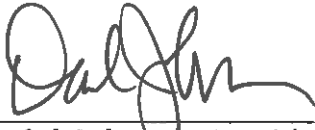
1. The Board of Commissioners authorizes the General Manager or designee to execute the Business Fixture Relocation Agreement, Phase 1, with Sound Transit (Attachment 1, incorporated herein by this reference).
2. The General Manager and/or the District’s Legal Counsel are authorized to make minor changes to the Business Fixture Relocation Agreement, Phase 1, if required.

**HIGHLINE WATER DISTRICT
King County, Washington**


RESOLUTION 18-10-17D

ADOPTED BY THE BOARD OF COMMISSIONERS of Highline Water District, King County, Washington, at an open public meeting held this **17th** day **October 2018**.

BOARD OF COMMISSIONERS



Daniel Johnson, President



Kathleen Quong-Vermeire, Secretary

Todd Fultz, Commissioner



Vince Koester, Commissioner



George Landon, Commissioner

Business Fixture Relocation Agreement (Mansion Hill Water Tanks)

PHASE 1

(FWLE Agreement No. _____)

This Business Fixture Agreement (“Agreement”) is made and entered into by and between Highline Water District, a water-sewer special purpose district organized under chapter 57.04 RCW (“Utility”), and the Central Puget Sound Regional Transit Authority, a Washington regional transit authority (“Sound Transit”). Utility and Sound Transit are sometimes referred to in the singular as “Party” or in the plural as “Parties.”

RECITALS

- A. Sound Transit is authorized to plan, design, and construct the Federal Way Link Extension Project (“FWLE Project”), a 7.6-mile extension of the regional light rail system. Sound Transit plans to start construction of the FWLE Project in 2019 with a start of light rail service targeted for 2024.
- B. Certain of Utility’s land and business fixtures at the Utility’s Mansion Hill Reservoir Site are located within the projected route of the FWLE Project and conflict with construction or future operation of the FWLE Project.
- C. In Sound Transit Resolution No. 2017-16 the Sound Transit Board authorized efforts to seek to acquire a portion of the eastern side of Utility’s Mansion Hill Reservoir Site.
- D. Sound Transit sent to the Utility a Notice of Eligibility for moving and relocation expenses under the Uniform Relocation Act, dated June 23, 2017.
- E. Utility is agreeable to the property acquisition and the demolition of certain Business Fixtures to accommodate the FWLE Project. Utility is therefore entitled to reimbursement for actual reasonable and necessary costs for the design, procure, and construct replacement business fixtures to accommodate the FWLE Project.
- F. The sale of real property rights from Utility to Sound Transit will be dealt with in compliance with the Uniform Relocation Act, 42 USC 4601, et seq., and implementing regulations found in 49 CRF part 24, and is not the subject of this Agreement regarding reimbursement for the relocation of business fixtures.

In consideration of the following terms and conditions, the Parties agree as follows:

AGREEMENT

1. Scope of Work

1.1. Location. The business fixtures that are to be relocated are on the Mansion Hill facility in the city of SeaTac, adjacent to Washington State Department of Transportation I-5 right-of-way. The location of the business fixtures and location of business fixtures once reconstructed are more particularly detailed, depicted, and diagrammed on **Exhibit A** attached hereto and incorporated in full herein by this reference.

1.2. Relocation Work. The Parties have agreed upon demolition, relocation, and construction of business fixtures, which may include engineering and design, demolition, protection, adjustment, and reconstruction, or monetary compensation of the business fixtures to accommodate the FWLE Project in

conjunction with sale of real property interests to Sound Transit of the portion of the Utility's real property where the relevant business fixtures are currently located. A scope of such demolition and relocation work ("Relocation Work") is attached as **Exhibit B** which is incorporated by this reference. Replacement of the functional value of a certain .25MG tank, which provides auxiliary pressure to Utility's system, being demolished to make room for the replacement 4.5MG water tank that is replacing the existing 5MG water tank on the portion of Utility's property that Sound Transit will acquire, has not been decided, and is therefore not a part of this Agreement. At the time of this Agreement, the Parties believe that the construction of a triplex booster pumping station will replicate the pressure provided by the .25MG tank; however, the Parties are currently exploring other more cost-effective alternatives. The parties may address this matter in a "Phase II" Agreement between the Parties.

1.3. Schedule; Time is of the Essence. If the Relocation Work is not completed by the date specified in the **Exhibit C** attached and incorporated by this reference, the FWLE Project may be delayed and impacted. Utility will use best efforts to complete the Relocation Work in the schedule specified. If the Relocation Work is to be performed during FWLE Project construction, Utility will complete the Relocation Work in conjunction and cooperation with Sound Transit's construction contractor.

2. Cost and Reimbursement

2.1. Cost Estimate. Utility has estimated the cost for the Relocation Work ("Cost Estimate"), which is included in **Exhibit B**. The Cost Estimates are estimates only.

2.2. Reimbursable Cost Requirements. Sound Transit will reimburse Utility for actual, reasonable, and necessary costs for Relocation Work in accordance with the Uniform Relocation Act, 42 USC 4601 et seq., and the implementing regulations found in 49 CFR part 24.

2.3. Betterments. Sound Transit will not reimburse Utility for Betterments. "Betterments" are additions or improvements to the existing business fixtures and are not necessary to functionally restore the operational capabilities of the relocated business fixtures or provide like-kind replacements. Additions or improvements are not Betterments if such additions or improvements are:

- a. replacement devices or materials that are of equivalent standards although not identical or more expensive;
- b. replacement of devices or materials no longer regularly manufactured with next highest grade or size;
- c. required under governmental regulatory statutes or appropriate regulatory commission code; or
- d. required by current design practices regularly followed by the Utility in its own work, and there is a direct benefit to the Project. As used in this context, "direct benefit to the Project" means a cost savings to the Project, where the net present value of the cost savings that will directly inure to the benefit of Sound Transit over the useful life of the addition or improvement exceeds the net present value of the cost to Sound Transit of such addition or improvement.

"Betterments" are identified in **Exhibit B** as being at the sole cost of Utility.

3. Invoicing. Utility may invoice Sound Transit once per month, and include with its invoice, documentation of actual Relocation Costs that are actual, reasonable, and necessary in accordance with the Uniform Relocation Act, and in particular 49 CFR part 24, subpart D.

3.1. Actual Cost. The invoices will include the following: (1) progress report or work statements, (2) invoices for support services and materials, (3) certification by Utility that the services have been

satisfactorily rendered, and (4) copies of original bills, invoices, expense accounts, and miscellaneous supporting data retained by Utility including, but not limited to work records, rates, material and equipment costs.

3.2. Invoicing. Invoices and supporting documentation must be sent to the following addresses:

If to Sound Transit:

AccountsReceivable@SoundTransit.org

and

Accounts Receivable
Sound Transit
401 S. Jackson
Seattle, WA 98104-2826

3.3. Payments. Payment must be sent to the following addresses:

Utility:

Accounts Receivable
Highline Water District
23828 – 30th Ave. S.
Kent, WA 98032

4. Records Retention. Utility will maintain all project records in support of all costs incurred and expended for a period of at least three years after final payment is made under this Agreement. Utility will open its records for inspection to Sound Transit during normal business hours. Copies of these records will be furnished to Sound Transit upon request. If an audit is requested or required by a Sound Transit or the federal government, the Utility will cooperate with requesting party and provide access to the Utility's records and copies of such records.

5. Designated Representatives. Each Party's Designated Representative is identified below. The Designated Representatives are responsible for coordinating the work and communications related to this Agreement. Either Party may change their Designated Representative, by written notice to the other Party's Designated Representative:

Sound Transit:

Mike Bulzomi
Senior Real Estate Agent
401 S. Jackson Street
Seattle WA 98104
(206) 903-7653
mike.bulzomi@soundtransit.org

Utility:

Jeremy Delmar, PE
Engineering Manager
23828 – 30th Ave. S.
Kent, WA 98032

6. Dispute Resolution.

6.1. Notice of Dispute. Designated Representatives will use their best efforts to resolve disputes and issues arising out of or related to this Agreement. The Parties will notify each other in writing of any problem or dispute the Party believes needs formal resolution under this section. This written notice must include a summary of (a) the issue to be resolved, (b) the differences between the Parties on the issue; and (c) the steps taken by Designated Representative to resolve the issue.

6.2. Dispute Process. Designated Representatives of the Parties will meet or confer by telephone within three business days of receiving the written notice or as soon as practicable, and attempt to resolve the dispute. In the event the Designated Representatives cannot resolve the dispute, Sound Transit's Executive Director of DECM or his/her designee and Utility's General Manager or his/her designee will meet within seven business days of receiving notice from a Designated Representative and engage in good faith negotiations to resolve the dispute.

6.3. Exhaustion. A Party has no right to seek relief under this Agreement in a court of law until each of these procedural steps is exhausted.

7. General Provisions.

7.1. No Waiver. Failure of a Party to enforce a term under this Agreement will not constitute a waiver of that term or any other term, unless otherwise provided in a writing executed by the Party charged.

7.2. No Agency. No joint venture or partnership is formed as a result of this Agreement. No employees, agents, or contractors of one Party may be deemed, or represent themselves to be, employees of the other Party.

7.3. No Third Party Rights. This Agreement is solely for the benefit of the Parties and gives no right to any other party. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under this Agreement on persons other than the Parties.

7.4. Compliance with Laws. The Parties will comply and, to the best of its ability, ensure, that its employees, agents, and contractors comply with all federal, state, and local laws, regulations, and ordinances applicable to the work and services to be performed under this Agreement.

7.5. Governing Law and Venue. This Agreement is governed by, and construed and enforced in accordance with, the laws of the State of Washington. Any legal action resulting from this Agreement must be brought in the Superior Court of King County.

7.6. Force Majeure. In the event that either Party is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond its reasonable control (a "Force Majeure Event"), then that Party's performance will be excused during the Force Majeure Event. Force Majeure Events include, without limitation, war; civil disturbance; storm, flood, and earthquake; sabotage; strikes or similar labor disputes involving personnel of a Party, its contractors or a third party; or failure or delay in the performance by the other Party, or a third party who is not an employee, agent, or contractor of the Party claiming a force Majeure Event in connection with the Relocation Work or this Agreement. Upon removal or termination of the Force Majeure Event, the Party claiming a Force Majeure Event will promptly perform the affected obligation in an orderly and expedited manner under this Agreement or procure a substitute for such obligation. The Parties will use all commercially reasonable efforts to eliminate or minimize any delay cause by a Force Majeure Event.

7.7. Entire Agreement. This Agreement, including the attached exhibits, comprise the complete and integrated agreement of the Parties. This Agreement cannot be amended or changed except by written instrument signed by both Parties.

7.8. Authority. The persons signing below represent that they are authorized to execute this Agreement on behalf of their respective Party.

7.9. Effective Date. This Agreement is effective as of the date of the last signature below (“Effective Date”).

7.10. Recitals. The Recitals above are incorporated into this Agreement by this reference.

<p>Sound Transit</p> <p>_____</p> <p>Peter Rogoff Chief Executive Officer Date: _____</p>	<p>Highline Water District</p> <p>_____</p> <p>By Its Date: _____</p>
<p>Approved as to Form</p> <p>_____</p> <p>Sound Transit Legal Counsel</p>	

EXHIBIT LIST:

Exhibit A: Location of Land and Business Fixtures

Exhibit B: Scope of Relocation Work and Cost Estimate

Exhibit C: Estimated Project Schedule

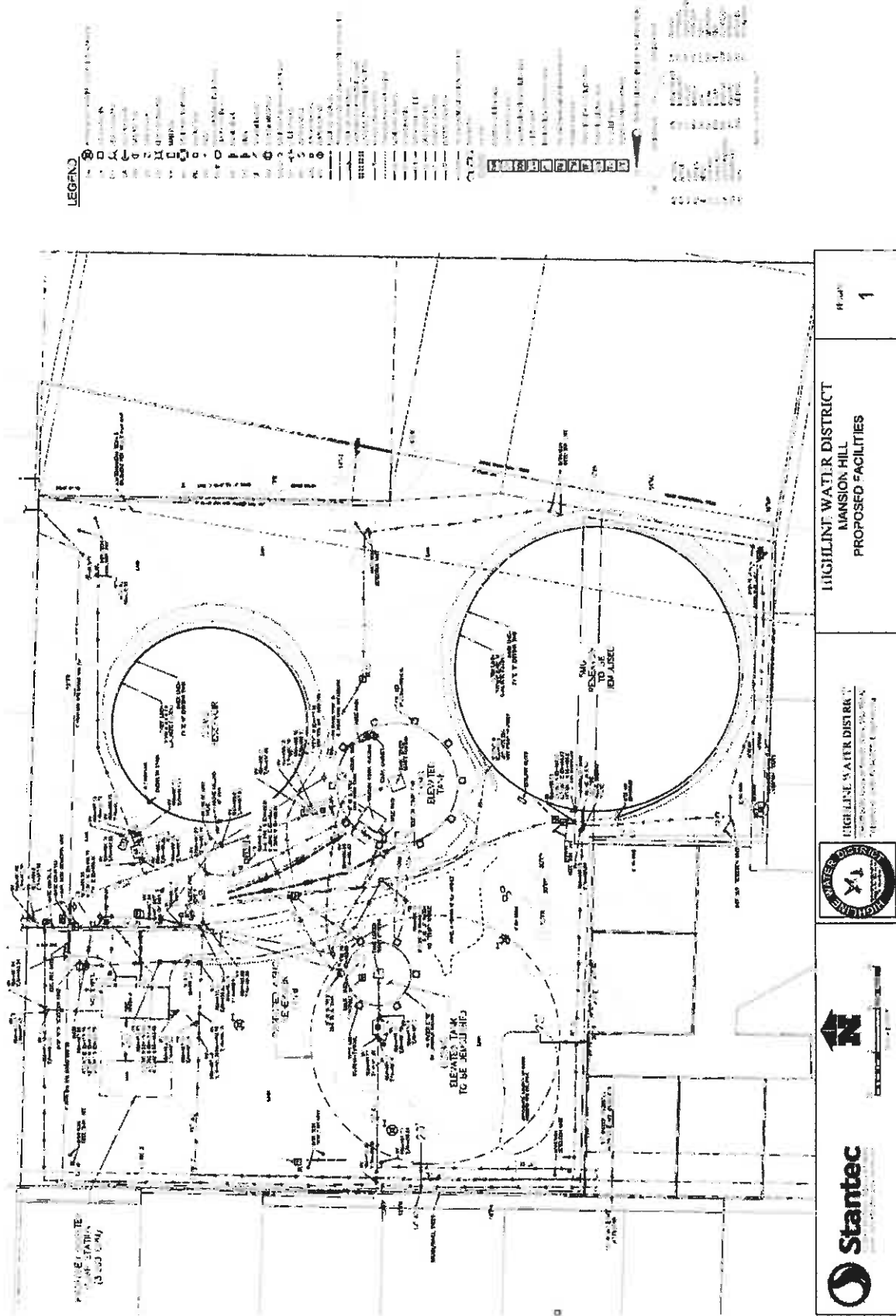
Exhibit A

Location of Land and Business Fixtures

The 5.0 million gallon (MG) steel ground reservoir ("Water Reservoir") is located on the eastern side of the Highline Water District property referred to as the Mansion Hill Tank site. The Water Reservoir will be replaced with a new, 4.5 MG steel ground reservoir ("New Reservoir") to the western side of the Mansion Hill Tank site. A second, 0.25 MG Elevated Water Tank ("Elevated Tank") must be removed to accommodate the New Reservoir. In addition, business fixtures include all appurtenances to support and facilitate the replacement of the Water Reservoir and the construction of the New Reservoir, including but not limited to piping, fittings, valves, electrical, fencing, and other miscellaneous materials and equipment.

The replacement of the functional capacity of the .25MG Elevated Tank has not been determined at the time of this Agreement.

[Exhibit A Figure]



**Exhibit B
Relocation Work
Cost Estimate**

Stantec Consulting Services Inc.
11130 NE 33rd Pl, Suite 200
Bellevue, WA 98004

Prepared by: ERP
Date: 11/2/2015
Checked by: JFG
Date: 11/15/2015
Preliminary

TITLE: Opinion of Probable Construction Cost
OWNER: Highline Water District
PROJECT: Mansion Hill Reservoir Relocation Project
JOB NO: 2002005061

Line Item	Spec	Description	Approx. Quantity	Unit	Unit Cost	Total Cost
Estimate #1 - Construct 4.5MG Reservoir and Demo 5MG Reservoir & 0.25 MG Elevated Tanks						
1	NA	Minor Changes	1	EA	\$ 10,000.00	\$ 10,000.00
2	NA	Mobilization	1	LS	\$ 256,000.00	\$ 256,000.00
	NA	Site Preparation and Staging	1	LS	\$ 200,000.00	\$ 200,000.00
3	NA	TESC	1	LS	\$ 10,000.00	\$ 10,000.00
	NA	Temp. Storm Water Detention/Treatment	1	LS	\$ 50,000.00	\$ 50,000.00
4	NA	Removal of Structures and Obstructions	1	LS	\$ 40,000.00	\$ 40,000.00
5	NA	Resolution of Utility Conflicts	1	LS	\$ 5,000.00	\$ 5,000.00
6	NA	Demo of Existing 5MG Tank	1	LS	\$ 200,000.00	\$ 200,000.00
7	NA	Demo of Existing .25MG Elevated Tank	1	LS	\$ 150,000.00	\$ 150,000.00
8	NA	New 4.5MG Reservoir w/Conc. Ringwall and Foundation Complete	1	LS	\$ 4,510,000.00	\$ 4,510,000.00
9	NA	Power Utility Pole Replacement by PSE	1	EA	\$ 5,000.00	\$ 5,000.00
10	NA	Relocation of Overhead Power by PSE	115	LS	\$ 5,000.00	\$ 5,000.00
11	NA	Underground Power by PSE	1	LS	\$ 10,000.00	\$ 10,000.00
12	NA	Electrical/SCADA System	1	LS	\$ 100,000.00	\$ 100,000.00
13	NA	18-inch DI Reservoir Fend, Class 52	40	LF	\$ 300.00	\$ 12,000.00
14	NA	18-inch DI Reservoir Drain, Class 52	40	LF	\$ 300.00	\$ 12,000.00
15	NA	18-inch Gate Valve and Valve Box for Reservoir Fend	1	EA	\$ 8,000.00	\$ 8,000.00
16	NA	18-inch Gate Valve and Valve Box for Reservoir Drain	1	EA	\$ 8,000.00	\$ 8,000.00
17	NA	12-inch DI Reservoir Overflow, Class 52	20	LF	\$ 200.00	\$ 4,000.00
18	NA	Additional Ductile Iron Fittings	1,000	IBS	\$ 4.00	\$ 4,000.00
19	NA	12-inch Duckbill Check Valve for Reservoir Overflow	1	EA	\$ 1,000.00	\$ 1,000.00
20	NA	Valve Vault for 18-inch Gate Valve	2	EA	\$ 2,000.00	\$ 4,000.00
21	NA	Type I CB (Overflow for 4.5MG)	1	EA	\$ 2,000.00	\$ 2,000.00
22	NA	12-inch CPEP reservoir Overflow	30	LF	\$ 100.00	\$ 3,000.00
23	NA	7 ft. Chainlink Security Fence (East Side)	700	LF	\$ 60.00	\$ 42,000.00
24	NA	Pipe Backfill Material	50	CY	\$ 40.00	\$ 2,000.00
25	NA	Exterior Lighting/Security	1	LS	\$ 10,000.00	\$ 10,000.00
26	NA	Misc. Equipment (Water Analyzer, Transducers, Etc.)	1	LS	\$ 20,000.00	\$ 20,000.00
27	NA	Surface Restoration	1	LS	\$ 5,000.00	\$ 5,000.00
Subtotal						\$ 8,688,000
Washington States Sales Tax @ 10% of subtotal						\$ 868,800
Subtotal						\$ 6,256,800
Inflation Factor (4% per year)						\$ 250,200
Subtotal						\$ 6,507,100
Contingency @ 20% of subtotal						\$ 1,301,400
Total Opinion of Probable Construction Cost						\$ 7,808,500
Design Fee						\$ 583,000
Bid Assistant/Construction Management/Inspection						\$ 807,000
TOTAL						\$ 8,998,500

Note: Construction estimated to occur in 2018/2019 for 19 months

EXHIBIT C
Estimated Schedule

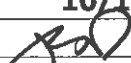
Reservoir Replacement Work

1. Engineering - April 2017 through September 2018
2. Contract Advertisement and Award - August 2018 through October 2018
3. Construction - November 2018 through January 2020
4. Project Closeout – January 2020 through April 2020

Note: The 5 MG Water Reservoir demolition will occur June 2019 to October 2019. The demolition of the Water Reservoir must be complete before Sound Transit, through its contractor(s), can do their work in the area of the Water Reservoir. The Water Reservoir cannot be demolished until the 4.5 MG New Reservoir is in service without mitigation by the Utility.

Pump Station Work

The proposed Pump Station Project is anticipated to begin after completion of the construction of the New Reservoir. The Pump Station is not anticipated to impact the schedule of the FWLE Project. A subsequent schedule will be presented to Sound Transit after completion of the New Reservoir.

Agenda Item No.: 5.3
Agenda Date: 10/17/18
Reviewed By: 

Subject: Authorize Business Fixture Relocation Agreement between HWD and Sound Transit
Project 16-3 Mansion Hill Reservoir Relocation

CATEGORY	
<i>Executive</i>	<input type="checkbox"/>
<i>Administrative</i>	<input type="checkbox"/>
<i>Engineering/Operations</i>	<input checked="" type="checkbox"/>

FINANCIAL						
<i>Expenditures?</i>	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
<i>Budgeted?</i>	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
<i>Estimated Amount:</i> \$ _____						Excludes sales tax

ATTACHMENTS:

1. Resolution 18-10-17D
w/Attachment 1 Business Fixture Relocation Agreement and Exhibit(s) A, B and C

COMMENTS:

The District is agreeable to the property acquisition and the demolition of certain Business Fixtures to accommodate the FWLE Project. The District is therefore entitled to reimbursement for actual reasonable and necessary costs for the design, procure, and construct replacement business fixtures to accommodate the FWLE Project.

Staff recommends approval of this resolution.